

# LATVIA

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that the U.S. Government should actively monitor developments in Latvia during 2011 with respect to the issues discussed in this Special Mention report.

Executive Summary:<sup>1</sup> Several copyright industries report poor enforcement persists in Latvia, but in particular, the business software industry reports both high piracy rates and a weak enforcement apparatus. According to preliminary Business Software Alliance (BSA) estimates, the software piracy rate in Latvia in 2010 was 56% (the same as in 2009), and the corresponding commercial value of unlicensed software put into the marketplace there was \$16.9 million.<sup>2</sup> That rate has remained high at businesses and government bodies – that is, end-user pirates utilizing unauthorized software throughout these private and public organizations.

The Business Software Alliance (BSA) reported that during 2010, the number of *ex officio* undertaken by the police against software pirates declined by approximately 70% compared with the same number of actions in 2009. Further, they reported that there were no court convictions in 2010 in any software copyright cases. The Latvian judicial process has several shortcomings including: very lengthy proceedings; an unreasonably high evidentiary burden; and, judges reluctant to properly adjudicate copyright cases. In addition, penalties for copyright infringements are minimal (usually comparable to the fines assessed for minor administrative offenses), and, in a number of cases, infringing goods have been returned to the pirates. In sum, the majority of courts do not comprehend the seriousness of the harm – both social and economic – that results from IPR infringements, and are not treating these cases properly.

Priority actions to be taken in 2011: IIPA recommends that the Latvian judiciary both speed up its proceedings, including the investigations and prosecutorial activities, and, when copyright cases do go to court, that they impose deterrent penalties in such cases. We also recommend a relaxation of the onerous evidentiary burdens regarding the preparation of expert reports in criminal cases (especially those involving computer programs).

One way to improve enforcement would be to improve both the communication and cooperation among all enforcement authorities, including: the Economic Police, the Municipal Police, the Financial Police, Customs, and the prosecutors and judges, as well as more effective cooperation between authorities and right holder organizations. Another avenue for improvement would be for the Government of Latvia to become a role model for the public by legalizing its own software use, which it has, to date, failed to do. It would also be helpful for all of the enforcement agencies to be tasked publicly with making IPR protection a priority.

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<sup>1</sup>For more details on Latvia's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/rbc/2011/2011SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2011 global issues, see our cover letter at <http://www.iipa.com/pdf/2011SPEC301COVERLETTER.pdf>.

<sup>2</sup>BSA's 2010 statistics are preliminary, representing U.S. software publishers' share of commercial value of pirated software in Latvia. They follow the methodology compiled in the Seventh Annual BSA and IDC Global Software Piracy Study (May 2010), <http://portal.bsa.org/globalpiracy2009/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2011 Special 301 submission at [www.iipa.com/pdf/2011spec301methodology.pdf](http://www.iipa.com/pdf/2011spec301methodology.pdf). BSA's final piracy figures will be released in mid-May, and the updated US software publishers' share of commercial value of pirated software will be available at [www.iipa.com](http://www.iipa.com).



## Enforcement

The IPR Enforcement Division of the State Police that was established in 2006 was, unfortunately, closed in 2010. Although some of its former staff joined the Cybercrime Division under the Economic Police, IPR issues are no longer a priority for the Cybercrime Division. As a result, IPR enforcement efforts continue to be ineffective. We highlight the following issues and recommend that they be the focus of enforcement in 2011:

- The widely available copies of illegal prerecorded optical media (DVDs, CDs etc.) containing musical recordings and software – including both pirated and parallel import copies – coming from Russia.
- The sale of pirated products sold in flea markets across the country. For example, at the largest illegal marketplace in Riga, the police have completely discontinued their efforts to stop sales of pirated goods because of the complex evidentiary burdens and the high bar for proving infringement in IPR cases.
- Internet piracy cases, which in 2010, were not being prosecuted at all even as illegal file sharing became commonplace. In 2005, an Internet case was initiated by Microsoft (for the sale of counterfeit CDs containing Microsoft software being sold on an eBay site); damages were estimated above \$3 million. To date, the court has not rendered even a preliminary judgment in the case.

## Legislation

In sum, IIPA believes that most of the basic critical legal reforms are in place, but on-the-ground enforcement remains weak. However, some legislative reforms are still necessary.

The criminal procedural provisions are archaic and result in substantial difficulties during prosecutions, especially because they call for the securing of detailed (and unnecessary) expert reports in all copyright infringement cases before criminal actions can be undertaken. At the same time, the police are reluctant to verify accounting documents of pirate software resellers, or to question employees during raids – either of which would be very useful for completing an investigation. In many cases, the courts drop charges against the owners or managers of companies using unlicensed software because of a lack of evidence (since the burdens are so high); these burdens require proof of either “individual” guilt or the direct intent of the individual – both of which are very difficult hurdles to overcome.

Amendments in 2006 to the Copyright Law and Civil Procedure Act incorporated WTO TRIPS-mandated civil *ex parte* search procedures. However, the courts remain reluctant to effectively apply these provisional measures, and require an onerous burden to obtain an indictment (even though the goods seized can be used in a later infringement action). Additionally, plaintiffs are required to post bonds (deposits) at very high rates -- generally the equivalent of the likely amount of the claim; this is very discouraging to rights holders wishing to bring legitimate claims.

Last, the Copyright Law (Art. 69.2) provides for the ability to claim damages in copyright infringement cases, but the amount of that compensation cannot exceed the amount of the license fee that the right holder would normally receive. This is not only not a deterrent to piracy, but acts to encourage infringement, since infringers know that they will likely not pay any more than a licensing fee if they are caught infringing.